

The Case of *Bernard Greenville, Esq;* and *Ann* his Wife, sole Daughter and heir of *Cuthbert Morley, Esq;* lately deceased, by way of appeal from a decree made by the Right Honourable the Lord Keeper of the great Seal of England, in a cause depending in Chancery, between *Cuthbert Morley* Plaintiff against *Jeremy, and Henry Elways* Defendants, humbly offered to the consideration of the Right Honourable, the Lords Spiritual and Temporal assembled in Parliament.

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I James Morley Esq; being seized in Fee of the Mannor of *Seymore* worth 1300 L. per Annum *Middleton* 200 L. per annum, half *Castle Levington*, 100 L. per annum, and 40 L. per annum in *Barkhamstead* and having an Estate for life in *Hilton* of 500 L. per annum, *Normanby*, 200 L. per annum, *Newby* 30 L. per annum, *Porto* 30 L. per annum, and a Lease-held of *Christ Colledge* in *Oxford*, let for about 300 L. per annum remainder to *Cuthbert* his Son for life and the heirs male of his body, (And having an Estate in the Mannor of *Mar*, 300 L. per annum for 99 years, and a privy Seal for 2000 L. did in *December* 1641. together with the aforesaid *Cuthbert* his Son joyn in Mortgageing the premises to one *Jeremy Elways* to secure him from any Damage, he or his heirs might sustain by reason of any engagement he had entred into with the said *Cuthbert*, for Mony borrowed by and for the said *James* which was not above 8000 L. howbeit the said *Jeremy* pretends it was 10000 L. and 3000 L. owing to him in all 13000 L.

James Morley dyed and soon after *Cuthbert* his Son entred.

1642

All the Estate sequestred for *Cuthberts* delinquency.

1643

Jeremy Elways the Mortgagee entred.

1644

Elways took of the Sequestration and ever since hath, or might have been in possession and received the profits.

1645

Cuthbert Morley was in *Newark* came out upon Articles one of which was to compound in six Months or quit the Kingdom, whereupon resolving neither to compound or have to do with the said Usurpers he contrived how to save his composition, and being advized that the only way was to release his interest in the mortgaged premises to the mortgagee who was his Brother in Law; and in whom the Estate in Law was vested by reason of the mortgage forfeited. He thereupon the 4 of *Sep.* 1646 executed such release to the said *Jeremy* in secret trust to have an account when in condition to receive the same, and in *Octo.* after quitted the Kingdom, continued under sentence of Banishment, till about *August*, 1660. and after the Kings Majesties happy Restauration, he came into *England*, and finding the mortgagee dead, he called to *Jeremy* his Son (Heir and Executor for an account who in Bar thereof pleaded the aforesaid release which was a Bar both in Law and Equity. Whereupon

Cuthbert Petitioned the House of Lords to set aside the said release.

The cause was heard at the Bar of the House of Lords, when the petition was dismissed upon the counsel for the mortgagees offer to wave the release.

April 1661

20 Apr. 62

Cuthbert exhibited his Bill in Chancery, the mortgagees answered issue joyned.

The cause heard, and the Defendants insisted upon the release, pretending due but offered to take 16000 L. The Lord Chancellor, thereupon decreed *Cuthbert* to pay 16000 L. at one payment in one year, and thereupon the mortgagees to reconvey all the mortgaged premises free from incumbrances

Easter Ter.

1662

Mich. Terme

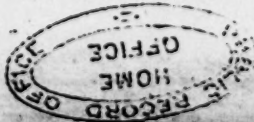
1663

But afterwards the mortgagees procured an Order *ex parte*, whereby it was declared, that the Manor of *Mar*, and Privy Seal of 2000 L. was not by the said Decree intended to be reconveyed upon, which the said *Cuthberts* Council advised him not to pay the 16000 L. but suffer the Bill to be dismissed, which it was, and the dismissal signed and inrolled; from which dismissal the said *Cuthbert*, and *Bernard Greenville Esq;* appealed to the Right Honourable the Lords Spiritual and Temporal in Parliament assembled, and the last Session of Parliament, Petitioned to have the said Release and Dismissal set aside, and to be relieved according to Justice. After hearing the Petition and the Proofs in the Cause read, and Council, divers dayes at the Bar, and after many dayes debate of the matter, their Lordships adjudged the Release to be a further trust than to pay 80 L. per annum, to *Cuthbert* for life, and therefore Ordered the Dismissions out of Chancery to be set aside, and the Cause to be remitted into that Court, with direction to the Right Honourable the Lord Keeper of the great Seal of England, to proceed therein, as in the Case of an equitable mortgage which their Lordships adjudged this Case to be.

A

The

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1st June
1668.

The Cause came to be heard before the Right Honourable the Lord Keeper of the Great Seal of England, who decreed *Cuthbert* the equity of Redemption, and the mortgagees to convey to him upon payment of principle Interest and Charges (onely the Manor of *Marr* and *Privy Seale* of 2000 l. is left out of this Decree, and the mortgagee is decreed to Accompt for what he or his Father hath (or without their own willfull default might have received out of the Profits of the mortgaged Premises, or by sale of part thereof, but with this special Direction to Sir *William Glascock* Knight, one of the Masters of that Court, that if in taking the said Accompt, it should appear to him that the Lands mortgaged in Fee were not a good security in 1645 (which is four years after the mortgage making) for all the Money then due to the mortgagee, and for which he was then bound with the mortgagers, and all other incumbrances upon the Estate at that time without respect to the value of the Estate for lives mortgaged with the Estate in Fee, that being a contingency in such Case the mortgagee is to Accompt for no more for the Estate for life, then the Mr. shall judge it was worth to be sold in 1645, and not according to the advantage that hath been been made by continuance of the life, and the reception of the Profits, and decreed *Bernard Greenville* Esq; who never was party to the Suit, to be bound by the same as the said *Cuthbert* ought to be, and made the mortgager or his heirs lyable to satisfie the said mortgagee the money he paid in his own wrong, and to the mortgagers ruine for compounding for, and purchasing the said mortgagers Estate from the late Usurpers, with which Decree the said *Cuthbert*, not being satisfied, Petition'd to be re-heard, and the 6th of July 1668 the Lord Keeper declared the said Order (as drawn to be his sence) but would hear any reason that could be offered against it, in *Michaelmas* Term when he would desire assistance of some of the Judges.

13th. Oct.
1668.

Upon the said *Cuthberts* Petition, the 30th of October was appointed for to hear what could be offered against the decree, and the Lord Chief Justice *Vaughan* and Lord Chief Baron desired to assist.

20 of Octob
1668.

The Lord Keeper, and Lord Chief Baron, upon hearing the said *Cuthberts* Council, confirmed the Order of the first June, from which decree *Bernard Greenville* and *Ann* his Wife, humbly appeal to the supream Court of Judicature, the Lords Spiritual and Temporal in Parliament assembled for their further explanation of the Judgment given by their Lordships the last Session, and the said decree grounded thereupon, which decree they humbly conceive to be very unreasonable, contrary to all decrees that have been made in Cases of mortgages, of dangerous consequence to be led in president, quite contrary to the intention of the House of Lords, in sending back the said Cause to the Chancery, and neither agreeable to Equity or Justice, and that for the Reasons following.

1. Because it directs the Fee simple Lands that were mortgaged to be a sufficient security for all the mortgage money, without the Estate for lives mortgaged with it, for which, if it had been, what needed the mortgaging of the Estate for lives.

2. Because it is limited to the year 1645, that then the Fee simple Land must be sufficient security. For in 1641, when the mortgage was made, and afterwards in 1648, after the War ended, it might be a good security for the mortgage money, which the mortgagees say was 13000 l. and yet not be security in 1645, for 19160 l. which, is then said to be due for Principle and Interest; and taking off the Sequestration in 1641, and afterwards in and after 1648, Rents were high Lands sold and let well; Tenants paid Rents duly; but in 1645 was the height of the War, Tenants broak, Lands thrown up. all the profits of the Estate then eaten up by the *Scotch* Army, and Land would not sell at all, yet the Mortgager no occasion of these less'ning the value.

3. Because the Fee Simple Land is not only to be a good Security for what was due to the Mortgagee in 1645, but for what the Mortgagee was bound with the Mortgager, for now he was bound for 26000 l. in 1641 if there was 13000 l. borrowed by *Morley*, and it might be as good security in 1641 for 13000 l. and not be so for 26000 l. nay it might be a good Security in 1645 for 19160 l. which is the Principle and Interest, and not be a good Security for 31160 l. which was the penalties of the Bonds and interest: But as this Decree is drawn, it must be a full Security for 31160 l. that is 26000 l. the penalties of the Bonds entered into, and 5160 l. interest & charges, or else the Mortgagee to accompt but as aforesaid, and this not all. From

4. The Fee Simple Land must be good security in 1645, for all incumbrances then upon the mortgaged Premises, as well as the money due to the mortgagee, and that he was bound with the mortgager for, or else he to accompt as aforesaid; This is severe for

for there were several Annuities payable out of the Estate for lives, and the Fee simple Lands not at all concerned to pay them; nor were they secured thereby, and howbeit the Estate for life is lookt upon by this Decree, because of the contingency thereof to be no security to the mortgagee, yet the incumbrances is by this decree taken off from that Estate for life which was liable to the payment of them, and is laid on the Fee simple Lands; and if the Fee simple Lands be not a sufficient security for those incumbrances, then the mortgagee to accompt but as aforesaid, and there was also several Judgements obtained against the mortgagers between 1641 and 1645 after the mortgage made, which are subsequent to the mortgagees Title, and impleads it not yet the Fee simple Lands must be sufficient security for them also in 1645, or else the Accompt to be as aforesaid, If the Case had been that in 1641, reckoning the Fee simple Lands at 15 years purchase, and the Estate for lives (there being two then in being) at ten years purchase, and both together had not been a good security for the mortgage money and the incumbrances upon the Estate prior to the mortgage, but the mortgagee had a bad security, which he was either forced to take, or was deceived into by being informed that it was all Fee simple that was offered him to mortgage, and if the mortgagee had been kept out of possession by the mortgager 20 years, and but newly entered, then it might seem reasonable to make such Decree, the rather if that the mortgager might all the time have redeemed the Estate and neglected it, because of the contingency, and now would come to redeem when he sees the life hath continued. And the mortgagee receives advantage thereby but when there was no fraud in the mortgager, no Estate for life mortgaged for an Estate in Fee when the mortgagee knew the security offered, and the contingency thereof, and yet accepted of it, and hath been in possession 25 years, received, or might have received Profits more then to pay his principal Interest and Charges; And when it was not the mortgagers default, that the mortgage was not redeemed, but he under banishment 16 years, and when restored, kept from an Accompt, and the redemption by the mortgagee his insisting upon the Release now set aside, it were hard in this Case to make a Decree that the Fee simple Lands should be a security sufficient in 1641, when the mortgage was made, but harder to decree it sufficient in 1645, for the mortgage Money and Interest onely; But most severe to decree that in Case it be not sufficient for the mortgage-money and all the mortgagee was bound for, and all other incumbrances upon all the mortgaged premises in 1645, that then the mortgagee shall Account for no more for the Estate for lives than what it was worth in 1645, for in 1645 there was but one life in being in the Estate mortgaged for lives (*James Morley* being dead) & that was worth but 7 years purchase, which at 1100 *l.* per annum, comes but to 7700 *l.* it should have been surely that he should account for what the Estate for lives was worth when the Mortgage for Life was made, and that was in 1641 when there was 2 lives in being, to wit *James* and *Cuthbert Morley*, who joyned in making the said Mortgage which at 10 years purchase would come to 11000 *l.* and it is humbly conceived that it had been but reasonable to have decreed that 11000 *l.* to have been deducted in 1641. out of the Original Mortgage Mony, & to have taken so much off from the sum borrowed, and left the Mortgager to pay Interest only for the remainder, and the Fee simple Land lyable for no more then what was borrowed, over and above the said 11000 *l.* for if the Mortgagee must be decreed to receive the profits of the Estate for lives as a purchase, and to account for no more then what they were worth to be sold; then he ought to pay his purchase Money when he makes his purchase which was in 1641. and not in 1645. which is four years after much less in 1669. which is 25 years after and well may this mortgagee, pay so for he hath or might have received 24 years profits which is at 1100 per annum 26400 for the 11000 *l.* which he by such decree should pay but if he account according to the decree that he accounts now but for 7700 which is 7 years purchase for the life that was in being in 1645 which will be 18700 *l.* difference in the account & will be hard for a mortgager to pay because the Fee simple Land, was not a full security for all the mortgage mony and all other incumbrances in 1645 when as it is not so much as objected but that the Fee simple Land and the other estate mortgaged, which the mortgagee accepted of putting both together was a sufficient security.

This decree is without president.

For in all cases of mortgages when ever a decree is made for the Redemption of an estate the mortgager is decreed to be admitted to redeem and to have a reconveyance upon payment of principle Interest and charges and the mortgagee decreed

to come to an account for all by him received out of the mortgaged premises; or which he might have received, without his own wilful default and to reconvey free from Incumbrances to the mortgager upon receiving principle Interest and costs, and there are daily estates that are only estates for lives mortgaged afterwards forfeited & for many years after the forfeiture not redeemed, yet when decreed to be redeemed the mortgage is decreed to give a full account of what he hath received and not to account only for what it was worth to be sold when mortgaged. And if it should be otherwise it would be of dangerous consequence and very prejudicial to all men who have occasion to borrow money and have no security to give but estates for life, or lives as most of the Gent. in the West whose estates consist in leases or copy holds for lives,

For they will not dare to borrow Money least taking up 500 l. upon a mortgage of a 100 l. per annum for three lives which is worth be sold 1200 l. and so a good security for 500 l. if they should not pay the Money at that time but the Mortgage be forfeited. And the Mortgagee enter and keep the Mortgager out of possession by suits in Law or setting up releases in Bar of their Redemption if when the Mortgager comes to set aside such release and to be admitted to redeem the Mortgage as a reward of his breach of trust should be decreed to account only for 1200 l. though he had received 2500 l. And yet the Mortgager decreed to pay to the Mortgagee his full principle Interest and charge and this only upon pretence of a contingency in the security which the Mortgagee knew of and accepted and lost nothing by. This is to give the Mortgagee 1300 l. for running that pretended hazard and his breach of faith as aforesaid.

The decree is humbly conceived to be contrary to the intention of the House of Lords in setting aside the release and dismissal out of Chancery and sending the cause back to that Court to be proceeded in according to equity as in the case of an equitable Mortgage and contrary to equity and conscience.

For the Judgement of the Lords seemed to import an intention of giving relief to the Mortgager from the hardship he was under by the former decree and dismissal.

But this decree put a greater hardship upon the mortgager then the former decree which for its hardship is set aside for that intimated, that howbeit there was 22000 l. due to the Mortgagee; yet the Mortgager should pay but 16000 l. which was 6000 l. less then was pretended to be due; but this Decree makes the Mortgager pay 18760 l. more then the Principle, Interest and Charges; which totally defeats him of the benefit he expected by the Redemption, and puts the heir of the Mortgager under a perfect impossibility of Redeeming the Estate, which by the same decree he is decreed the equity of Redemption. And it decrees the Mortgager to pay the Mortgagee the money he laid out, with design to advantage himself, but to ruine and defraud the Mortgager.

These things considered, And for that the Appellants are willing to pay the Principle and Interest, it is humbly prayed, that the House of Lords will please to retain the Petition and Appeal of the said Bernard and Anne his Wife, and give such further direction for the Appellants relief as is agreeable to Equity and Justice, and as always hath been in Chancery in Cases of the like nature.

That so the Appellants may have a full Account of all Profits that have or might have been received by Mortgagees without their own default, and upon payment of the Mortgagees their Principle and Interest, and necessary Charges, the Mortgagees may be decreed to Reconvey all the mortgaged Premises to the Appellants, and their Heirs free from Incumbrances.

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3. premeditated case

Thurs 12th Nov, 1669 165

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Mr Hickey

yesterday a vessel of this -
towne arrived here for portingall -
& this day another for y^e Canaries -
one for Cadiz & another for y^e Barbadoes
& they report y^e m^{rs} of Maryland
were only 3 ships driven on shore,
but no other of them lost, here is -
nothing else at p^{re}s^{ent} worth
y^{or} notice I take leave & am,

Y^{or} humble serv^t -
John Clarke

